

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 89920-001

v

Priority Health HMO
Respondent

**Issued and entered
this 24th day of July 2008
by Ken Ross
Commissioner**

ORDER

**I
PROCEDURAL BACKGROUND**

On May 21, 2008, XXXXX ("Petitioner") filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* After a preliminary review of the material submitted the Commissioner accepted the request on May 28, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the certificate of coverage ("the certificate") issued by Priority Health, a health maintenance organization. The Commissioner reviews contractual issues under MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

**II
FACTUAL BACKGROUND**

On February 11 and March 13, 2008, the Petitioner had laboratory services from XXXXX and XXXXX Hospital respectively. The services included, among others, a biopsy to check for a recurrence of skin cancer and blood tests to check the status of his diabetes.

Priority Health covered the services as diagnostic tests and applied the allowed fee to the Petitioner's annual deductible. (The deductible is \$2,000.00 for an individual and \$4,000.00 per family.) The Petitioner appealed, arguing that the laboratory services were preventive health care and therefore not subject to the deductible. Priority Health disagreed, saying it processed the claims in accordance with the terms of the certificate.

After the Petitioner exhausted the internal grievance process, Priority Health sent a final adverse determination letter dated May 15, 2008, upholding its denial of his appeal.

III ISSUE

Was Priority Health correct when it applied the allowed fees for the Petitioner's laboratory tests to his deductible?

IV ANALYSIS

Petitioner's Argument

The Petitioner notes that preventive care services are not subject to the deductible. Based on the information he received regarding preventive care, the Petitioner says the laboratory services he received on February 11 and March 13, 2008, were preventive services: "I am arguing that because of my age and medical profile, blood tests and a skin check are unique to me as preventive care to prevent future more expensive medical procedures."

The Petitioner contends that due to his age and unique medical history (skin cancer, diabetes mellitus) the laboratory services are preventive and therefore Priority Health should waive the deductible and cover the services as preventive care.

Priority Health's Argument

Priority Health asserts that the Petitioner's services were subject to his annual deductible. The certificate has this provision regarding covered laboratory tests:

Section 6: Covered and Non-Covered Services

* * *

A. Professional Services

1. Primary Care, Including Health Maintenance And Preventive Care Services

* * *

- (i) Diagnostic and therapeutic radiology services and laboratory tests not excluded elsewhere in this Section 6.

* * *

Services and tests performed that are not preventive health care or routine maternity care services may be subject to a Deductible even if the service or test was ordered by a provider and partially performed in a provider's office. Preventive health care services are only those services described in Priority Health's preventive health care guidelines available in the member center on our website at priorityhealth.com. [Underlining added]

A rider to the certificate contains the following:

The Schedule of Copayments and Deductibles of your Certificate has been amended to add the following:

Deductible (The amount of Covered Expenses you must incur during the Contract Year before benefits will be paid.)

Individual: \$2,000.00

Family: \$4,000.00 (but not to exceed the Individual Deductible per person)

The Deductible is applicable to all Covered Services except:

- services subject to a flat dollar Copayment on the Schedule of Deductibles and Copayments,
- routine maternity care (the deductible does apply to facility charges for delivery), and
- certain preventive health care services that are listed in Priority Health's preventive health care guidelines. [Underlining added]

* * *

The Deductible is applicable to any service or screening that is not included in Priority Health's preventive health care guidelines.

Priority Health says that the laboratory tests the Petitioner received were billed with codes that are not considered to be preventive. Priority Health further said:

The claims for services [the Petitioner] received on February 11, 2008, from XXXXX and on March 13, 2008 from XXXXX Hospital were billed with the diagnoses of Benign Neoplasm of Scalp and Skin of Neck and Diabetes Mellitus, respectively. * * * These diagnoses indicate that the requested services were necessary specifically for [the Petitioner] due to his unique health status and are not services that are recommended to the general public regardless of health status, a point which [the Petitioner] does not dispute. [The Petitioner] argues that, for him, the requested services are considered preventive because of his previous history of skin lesions and diabetes. Priority Health agrees that the requested services were necessary specifically for [the Petitioner]...which is the reason that the requested services are not considered preventive. As previously stated, preventive services are standard screenings recommended for various age groups of the general public *regardless* of health status. * * * Priority Health processed the claims...in accordance with [the Petitioner's] HMO contract.

Priority Health believes it was correct in applying the allowed fee for the Petitioner's laboratory services to his annual deductible.

Commissioner's Review

Priority Health points out (in the certificate provisions quoted above) that the tests listed in its preventive health care guidelines are not subject to the deductible. Preventive health care tests are considered to be "screening" tests. Screening tests are performed for seemingly well individuals who exhibit no signs or symptoms so that early detection and treatment can be provided.

Based on the explanation of benefit forms in the file, the tests the Petitioner received are shown in the table below. The table also shows whether the test or service is included in Priority Health's preventive care guidelines for persons 40 to 64 years old (the Petitioner was 58 years old at the time the tests were performed):

Date of Service	Provider	CPT Code	Test or Service	Included in Preventive Health Care Guidelines?
2/11/08	Kent Pathology	88305	Surgical pathology; skin biopsy	No

Date of Service	Provider	CPT Code	Test or Service	Included in Preventive Health Care Guidelines?
3/13/08	Spectrum Health	80053	Comprehensive metabolic panel	No
3/13/08	Spectrum Health	80061	Lipid panel; lipoprotein, cholesterol; triglycerides	Yes ¹
3/13/08	Spectrum Health	83036	Hemoglobin	Yes ²
3/13/08	Spectrum Health	84153	Prostate specific antigen; total	No
3/13/08	Spectrum Health	85027	Blood count; complete (CBC)	No
3/13/08	Spectrum Health	81001	Urinalysis	No

The Commissioner concludes that at least two of the tests the Petitioner received (80061 and 83036) were tests included in Priority Health's preventive health care guidelines and should not be subject to the deductible (assuming they had not been performed more frequently than the preventive health care guidelines permit). The other tests the Petitioner received were not included in the preventive health care guidelines and are subject to the deductible.

V ORDER

The Commissioner upholds in part Priority Health's May 15, 2008, final adverse determination in this case. Priority Health correctly applied the allowed fee to the Petitioner's deductible for tests 88305, 80053, 84153, 85027, and 81001 according to the terms and conditions of the certificate and its riders. Priority Health shall not apply the allowed cost for tests 80061 and 83036 to the deductible unless the Petitioner has had the tests more frequently than permitted by Priority Health's preventive health care guidelines.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court

¹ One test covered every five years.

² One test covered every two years.

of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.